



STATE OF MINNESOTA

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February 10, 2010

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The Honorable Donovan Frank
United States Magistrate Judge
334 Federal Building
316 N. Robert Street
St. Paul, MN 55101

Re: *State of Minnesota v. CMI of Kentucky, Inc.*
Case Number: CV-08-603 (DWF/AJB)

Dear Judge Frank:

Pursuant to the Consent Judgment and Permanent Injunction issued in the above-referenced matter on July 16, 2009, the State respectfully requests a pretrial conference or, in the alternative, a case management conference to discuss the outstanding discovery disputes.

The Consent Judgment and Permanent Injunction has been extremely helpful in facilitating a potential resolution of source code challenges in implied consent and criminal DWI cases. With only one or two exceptions, state district court judges throughout Minnesota have readily adopted the Consent Judgment and Permanent Injunction in granting motions for discovery of the source code. As you are aware, the Minnesota Supreme Court has consolidated all implied consent cases and many criminal DWI cases dealing with source code to be heard by Judge Abrams in the First Judicial District.

Some petitioners and defendants have joined together to review the source code, while others are reviewing the source code on their own. However, all experts are requesting more information than is permitted by the Consent Judgment and Permanent Injunction. Although defense counsel has spent some time working with CMI's counsel to resolve these differences, outstanding issues still remain. Accordingly, a pretrial conference or case management conference is necessary to move the consolidated state court litigation forward.

Very truly yours,

s/ Alan I. Gilbert

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cc: The Honorable Jerome Abrams, First Judicial District
William McNabb and David Aafedt, counsel for CMI of Kentucky, Inc.
Charles Ramsay, counsel for Plaintiff-Intervenors
Marsh Halberg, counsel for Minnesota Society of Criminal Justice
Derek Patrin, counsel for some Authorized Minnesota Litigants

AG: #2585708-v1